IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 158 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAKTI COPPERLINE ENGOMEERS

Versus

BANK OF INDIA

Appearance:

1. First Appeal No. 158 of 1984

MR PM THAKKAR for Petitioner No. 1-2

MR DUSHYANT A DAVE for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE H.K.RATHOD

Date of decision: 08/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE H.K.RATHOD)

Heard learned advocate Mr. R.V. Dagli for the appellant - original defendants no.1 and 2 and Mr. K.J. Mekwan, learned advocate for respondent No.1 - bank original plaintiff. Respondent No. 2 has been served but has not appeared before this court either in person or through any advocate. Therefore, the matter has been taken up for final hearing in absence of respondent No.2.

By means of this appeal, the appellants original defendants have challenged the judgment and decree passed by the learned Civil Judge,(S.D.), Rajkot in Special Civil Suit No. 139 of 1978 dated 3rd January, 1983 wherein the learned trial Judge has decreed the suit in favour of the plaintiff entitling the plaintiff to recover Rs.1,13,436.67 from the defendants with interest thereon at the rate of 13 per cent per annum from the date of the suit till realization thereof in full with costs, by monthly instalment of Rs.4000.00 commencing from 1st February, 1983. Under the said judgment and decree, the trial court has further directed that if the defendants fail to pay any two instalments in time, the plaintiff bank shall be entitled to recover the remaining amount due at a time. For the sake of convenience, parties to the present appeal have been referred to in their original character.

Brief facts of the present case are to the effect that the respondent No.1 original plaintiff is a Body Corporate under the Banking Companies Act having its office at Bombay and branch at Rajkot. The appellant NO.1 original defendant No.1 is a proprietary concern and the appellant NO.2 original defendant No. 2 is the sole proprietor of the said firm. Original defendant No.1 and 2 requested the plaintiff bank for granting advance by way of demand loan amounting to Rs.65,000.00 and the plaintiff bank accepted the proposal and granted loan of Rs.65000.00 with interest thereon at the rate of 13 per cent per annum. Defendant No.1 and 2 executed demand promissory note; letter of hypothecation, letter of lien etc.in favour of the plaintiff bank. Defendant No.3 stood as a surety and executed surety bond in favour of the plaintiff bank. At the request of the defendant no.1 and 2,the plaintiff bank agreed to grant an advance by way of cash credit facilities with a limit of Rs.15,000.00 for which the defendants executed necessary documents in favour of the bank and the defendant no.3 also executed deed of guarantee. The defendants,

theretofore, borrowed two more loans from the plaintiff bank amounting to Rs.15,000.00 and Rs.10,000.00 increasing the cash credit facility limit to the tune of Rs.40,000.00.As per the case of the plaintiff before the trial court, the defendants failed to repay the amount in time and so they were served with a notice dated 21.7.1978 and were called upon to repay the amount amounting to Rs.1,12,123.18 ps. but of no avail and, therefore,the plaintiff filed the aforesaid suit before the trial court.

The suit of the plaintiff was resisted by defendants no.1 and 2 before the trial court by filing their written statement at Exh. 74 contending inter alia that the suit is neither true nor bona fide and is not maintainable at law. It has been contended that the suit is barred by law of limitation. it has been further contended that the person who has signed the plaint is not authorized to do so and, therefore, the suit is required to be dismissed It has been denied by the defendants that they have borrowed Rs.65,000.00 from the bank as alleged or to have executed any documents in favour of the bank as alleged or to have taken cash credit facilities to the tune of Rs.40,000.00 and to have executed promissory note, hypothecation letter etc. It has also been contended that the plaintiff is not entitled to recover the suit amount. Alternatively, it has been submitted that they may be allowed to repay the amount of loan by monthly instalment of Rs.500.00. Similarly, defendant no.3 has also filed his written statement at Exh. 19 contending inter alia that the contents of the suit are not admitted. He has denied to have stood as a surety for the loans borrowed by the defendants no.1 and 2. He has also denied to have executed guarantee bond in favour of the plaintiff bank. He has shown total ignorance regarding the transactions between the parties. He has also contended that the suit is barred by law of limitation and has ultimately prayed for dismissing the suit with costs.

Issues were framed by the trial court on the basis of the pleadings of the parties at Exh. 21.

Learned advocate Mr. Dagli has read the judgment of the trial court before us. He has raised two contentions before us, one of which is that the documents at Exh. 87, 88 and 100 were not signed by defendant No.2 and his signature was not proved before the trial Court. Next contention raised by him is that the suit of the plaintiff is barred by the law of limitation on the ground that the loans were borrowed as alleged in the

year 1973-74 whereas the suit has been filed on 3rd August, 1978, after the expiry of three years. Except these two contentions, no other contentions has been raised by Mr. Dagli, learned advocate for the original defendants no.1 and 2.

While supporting the impugned judgment and decree passed by the trial court,learned advocate Mr. Mekwan has submitted that the documents at Exh. 87, 88 and 100 were bearing signature of the defendant No.2 and 3. He has submitted that the defendant no.3 has not denied his signature by stepping into the witness box before the trial court. He has also submitted that the said signatures were verified by the trial court and the trial court has come to the conclusion that all these documents are signed by defendants. He has submitted that the trial court has rightly come to the conclusion that the documents at Exh. 87, 88 and 100 were signed by defendant No.2. As regards the contention that the suit of the plaintiff was barred by the law of limitation, he has submitted that the loans were borrowed by defendants no.1 and 2 in the year 1973-74 but the defendants have executed letter of acknowledgment at Exh. 87 ,88 and 100; documents at Exh. 87, 88 and 100 were signed by the defendants acknowledging the debt of the plaintiff bank and in view of the acknowledgement of debt made by the defendants as per the documents at Exh.87, 88 and 100 on 29th October, 1975, limitation would commence from 29th October, 1975 and the suit was filed on 3.8.1978 and, therefore, in view of the acknowledgment of debt made by the defendants as per the documents at Exh. 87, 88 and 100, which were proved before the trial court by the plaintiff bank, it cannot be said that the suit of the plaintiff is barred by law of limitation. Therefore, according to his submission, there is no substance in the contentions raised by Mr. Dagli on behalf of the appellants original defendant no.1 and 2.

We have perused the judgment delivered by the trial court as well as the original record of the trial court. We have also considered the submissions made by the learned advocates for the parties.

Before the trial court, on behalf of the plaintiff bank, its officer Shri Matalia was examined at Exh. 78 wherein it was deposed by him that the defendants no.1 and 2 borrowed loan of Rs.65,000.00 and executed necessary documents in favour of the bank; that the defendants no.1 and 2 enjoyed cash credit facilities to the tune of Rs.40,000.00 from the bank and executed documents in favour of the bank. Defendant NO.3 stood as

a guarantor in all the transactions. In support of his oral evidence, Mr. Matalia has produced documentary evidence at Exh. 79 to 108 and it was his case as per his oral evidence before the trial court that he knows the defendants and they had signed the documents in his presence. In his cross examination, it was deposed by him that the defendants have not signed in other documents in his presence except those produced in this case. Another witness examined by the plaintiff is Mr. Pandya, Accountant of the plaintiff bank who has been examined at Exh. 110 wherein it was deposed by him that the cash credit amount is not paid to the party but the same is directly remitted to the person from whom the machinery have been purchased.

Thereafter, defendant No.2 was examined at Exh. 112 wherein he has deposed that he applied to the plaintiff bank for the loan of Rs.65,000.00 and the loan was sanctioned but the amount was not paid to him but was paid to the person from whom the machinery was purchased. From the oral evidence of the defendant No.2, it would appear that he has admitted his signature on certain documents but has denied his signatures on Exh. 87, 88 and 100 and has deposed that he was not informed as and when the bank rate or the rate of interest was changed. He has also denied to have received a sum of Rs.40,000.00 from the bank. he has deposed that his economic condition is not good but he is prepared to pay the decretal amount by monthly instalment of Rs.2000.00.

The trial court, after considering the above oral evidence of the witness Mr. Matalia at Exh. 78, Mr. Pandya at Exh. 110 and the oral evidence of the defendant no.2 at Exh. 112, has come to the conclusion that these documents Exh. 87, 88 and 100 were also signed by defendant no.3 and it was observed that not a single question has been put forward to Mr. Matalia that these documents do not bear the signature of defendant no.3. Defendant No.3 has not stepped into the witness box for denying that he has not signed these documents as alleged. Therefore, in view of these facts, that the defendant no.3 has signed all these documents Exh. 87, 88 and 100, how can it be said that they re not signed by defendants no.1 and 2? It was not the case of the defendant no.3 that the documents at Exh. 87, 88 and 100 are concocted and fabricated documents. From the record produced before us, it does appear that the genuineness of the said documents was not challenged by defendant no.2 and the same was produced by the plaintiff bank alongwith other documents. Therefore, these three documents Exh. 87, 88 and 100 are the genuine documents

produced by the bank. As regards the objection raised by defendant no.2 that these documents were not signed by him, it was observed that in such circumstances, defendant no.2 ought to have proved that these documents are not signed by examining the hand writing expert but he has failed to do so. The trial court has also compared the signature of defendant no.2 on these documents alongwith the signature on the admitted documents and after such verification, the trial court has come to the conclusion that all these documents have been signed by defendant no.2 and nobody else. Similar exercise has been carried out by us. According to our opinion, the trial court was right in coming to the conclusion that all these three documents are signed by defendant no.2 and nobody else. Considering the oral evidence of the witness Mr.Matalia, Mr. Pandya who were examined on behalf of the bank and the oral evidence of the defendant No.2 at Exh. 112 before the trial court, according to our opinion, the trial court has rightly appreciated the evidence on record and has rightly come to the conclusion that these three documents are signed by defendant no.2 and nobody else. As per our opinion, in doing so, the trial court has not committed any error. We are also of the opinion that such conclusions drawn by the trial court are based upon legal evidence and,therefore, there is no substance in the contention raised by Mr. Dagli that these documents at Exh. 87, 88 and 100 are not signed by defendant No. 2 and the same is rejected accordingly.

Next contention raised by him that the suit of the plaintiff is barred by the law of limitation on the ground that the loans were borrowed as alleged in the year 1973-74 whereas the suit has been filed on 3rd August, 1978, after the expiry of three years also cannot be accepted in view of our conclusion as regards first contention raised by Mr. Dagli. This aspect has been considered by the trial court in para 18 of the judgment and for that, there is no dispute between the parties. It is clear that the loans were borrowed by the defendants no.1 and 2 in the year 1973-74 whereas the suit has been filed on 3rd August, 1978 but subsequently, after the loans were obtained, defendants executed letters of acknowledgment Exh. 87, 88 and 100. By executing these documents, the defendants have acknowledged the debt on 29th October, 1975 and, therefore, calculating the period of limitation from the date of acknowledgment of the debt as per the documents at Exh. 87, 88 and 100 proved before the trial court, it cannot be said that the suit is beyond the period of limitation. Therefore, there is no substance even in the

second contention raised by Mr. Dagli and the same is, therefore, rejected by us.

Save and except these two contentions, no other contentions have been raised by Mr. Dagli on behalf of the appellants herein which we have rejected as stated earlier. According to our opinion, the suit of the plaintiff was filed before the trial court within the period of limitation and the trial court has rightly appreciated the factual aspects while keeping in view the relevant provisions of law and in doing so, the trial court has not committed any error. It is necessary to note that technical stand has been taken by defendant no.2 that he has not signed the respective documents at Exh. 87, 88 and 100 but there are clear findings of fact that defendant no.2 has signed the said documents in favour of the concerned officer Shri Matalia. According to our opinion, by producing the documents at Exh. 87, 88 and 100 before the trial court and by examining the said witness Mr. Matalia before the trial court, the plaintiff has proved the execution of the said documents and in view of that, it was necessary for the defendant No.2 to examine the hand writing expert for proving that the said documents were not signed by him. That part of the oral evidence of the witness for the plaintiff Shri Matalia has gone unchallenged on one hand and the defendant no.2 has also not examined any hand writing expert for proving that he has not signed those documents. Further, during the pendency of the suit before the trial court, the defendant no.2 has admitted the debt of the plaintiff bank as per written statement Exh. 74 wherein it was his alternative submission that he may be allowed to pay the dues of the bank by monthly instalment of Rs.500.00 and in his deposition at Exh. 112 also, as discussed in para 11, internal page 7, defendant no.2 has deposed that his economic condition is not good and he is prepared to pay the decretal amount by way of monthly instalment of Rs.2000.00. Thirdly, it has been prayed by the defendants before the trial court that in case if the decree is passed in favour of the bank, then, the defendant no.2 may be allowed to repay the suit dues by way of monthly instalment of Rs.2000.00. It has also been deposed by defendant no.2 that he has to pay Rs.80,000.00 to Jeevan Commercial Bank and Rs.24,000.00 to the Bank of Maharashtra and he has also to pay Rs.42,000.00 towards the rent for the factory premises and so he should be permitted to repay the decretal amount by way of monthly instalment of Rs.2000.00 and considering such prayer in light of the evidence before it, the trial court has granted instalment of Rs.4000.00 of the entire amount with costs and interest and,

therefore, these are three places where entire debt has been admitted by the defendant and request was made for permitting him to pay the suit dues by way of monthly instalment.

Considering these facts also, we are of the opinion that the trial court was right in decreeing the suit of the plaintiff. We are of the view that the conclusions drawn and the findings recorded by the trial court are based upon the legal evidence and the same would not require any interference of this court in this first appeal. Mr. Dagli, learned advocate appearing for the appellants has not been able to point out any infirmity and/or perversity in the findings recorded by the trial court. We, therefore, do not see any merits in this appeal and the same is, therefore, dismissed with costs.

Dt.8.10.2002. (Kshitij R. Vyas,J.)

(H.K. Rathod,J.)

Vyas